

JUDGE PROTEM

DRAWER 4

LAW PRACTICE

71.2009.085.04110

Abraham Lincoln's Law Practice

Judge *Pro Tem*

Excerpts from newspapers and other
sources

From the files of the
Lincoln Financial Foundation Collection

LINCOLN NEVER JUDGE

JUDGE SMITH SAYS IT IS A WELL
KNOWN FACT.
CEDAR RAPIDS, IOWA
"REPUBLICAN"

That Martyr Was Never a Judge in
His Life—Something More on Lin-
coln and Douglas From Judge of
District Court.

2. 12. 1905

Judge Milo P. Smith has been reading some of the Lincoln literature recently appearing in the papers and he takes exception to much of it as to its accuracy. In a statement to a reporter of The Republican he said that the invitation by some of the press for contributions in regard to Abraham has disclosed either a very great lack of accurate recollections of the past or has evidenced to a remarkable degree the creation of fictitious events. As an illustration, he says: "I noticed an article in The Republican of the 10th instant from a Mr. Clark of Fort Dodge in which he speaks of a speech made by Mr. Douglas at Cedar Rapids in 1859. It is intimated in the article that Lincoln and Douglas held a joint debate there. He also speaks of the personal appearance of Mr. Douglas and the way he combed his hair.

"It is a fact," said Judge Smith, "that Mr. Lincoln never made a public speech in Cedar Rapids and Mr. Douglas never made but one and that was during his campaign for the presidency in 1860, during the latter part of the summer or the early fall. I was attending college at Cornell and a great many of the students came up to Cedar Rapids on a special train, the cars being like the common cattle cars of today. I heard his speech throughout and then drove in a buggy to Marion where he made another short address at which time he spoke from a box standing on the easterly side of Colonel Preston's law office, which office is the one occupied by the Linn County Abstract company. From there, Douglas was driven to Anamosa by Dr. Sayles of Anamosa, and others; and I drove in company with the team as far as Springville.

N. M. Hubbard Questioned Him.

"During his speech at Cedar Rapids he had two or three very pertinent and difficult questions put to him by a keen, blue-eyed, black-haired, fearless young lawyer of Marion by the name of N. M. Hubbard, which seemed to disconcert him considerably, but he came back at Hubbard with the remark that he hadn't made a speech yet in the north that some audacious abolitionist didn't propound similar questions to him. He attempted to answer the first question put, but the second was more difficult and he swept it by in that majestic style of his and it was not answered.

"I am afraid that Mr. Clark's description of Douglas and the way he parted his hair in the middle and roached it up in front was taken from some of the early pictures of the judge and not from his appearance at that time, for he parted his hair on one side and it lay flat on his head as it always did during the latter years of his life.

That Bloomington Court.

"In a communication in one of the dailies by Mr. Cessford of Cedar Rapids, concerning Abraham Lincoln, he says that he was either a witness or, or a spectator at, a law suit tried before Judge Lincoln at Bloomington, Illinois, and gives some so-called incidents of the trial and further on says that he heard Lincoln's farewell speech as he left Bloomington for Washington City to assume the duties of the presidency.

"It is a well known fact that Mr. Lincoln never lived in Bloomington and made no farewell speech on leaving it, and furthermore that he was never a judge in his life. Any one familiar with one-half of the numerous biographies of Abraham Lincoln knows that nearly one-half of the accounts of the actions of Mr. Lincoln's life that have recently appeared in print were simply creatures of the imagination.

Judge Smith says that the question which Hubbard put to Douglas without receiving an answer was substantially as follows: "How do you reconcile your doctrine of squatter sovereignty with the supreme court's decision in the Dred Scott case?" The crowd of Cornell students which went to Cedar Rapids to hear Douglas speak, was chaperoned by old Squire Henry A. Collin, a staunch democrat.

LINCOLN LORE

Bulletin of the Lincoln National Life Foundation - - - - - Dr. Louis A. Warren, Editor
Published each week by The Lincoln National Life Insurance Company, Fort Wayne, Indiana

Number 1054

FORT WAYNE, INDIANA

June 20, 1949

JUDGE ABRAHAM LINCOLN

There have been so many sobriquets applied to Abraham Lincoln that one more, though seldom used, would not surprise the reader. While it is known that Lincoln was never officially raised to the distinguished office of Judge, there were instances in which he did preside at court sessions and was undoubtedly addressed on these occasions as Judge Lincoln.

It is doubtful if Lincoln ever gave serious consideration to the seeking of a judgeship although the *Register* at Springfield, Ill., opposition paper, stated on February 6, 1850, that there was a scramble among the Whigs for the office of Federal District Judge. The paper then went on to list some of the alleged aspirants as follows: "Among the most prominent names . . . are Messrs. Browning, Bushnell, Butterfield, Logan, Lincoln and Williams."

One of the reasons why an Illinois judgeship would not appeal to Lincoln was the criticism which he had made against the political revamping of the Judiciary in Illinois in 1840. Stephen A. Douglas presented a bill in a predominately Democratic legislature by which the incumbent Circuit Judges were turned out of office and five additional members of the Supreme Court were authorized. Lincoln drew up a protest containing seven arguments against such a procedure. The first objection was that "It violates the principles of free government by subjecting the Judiciary to the Legislature." Douglas the sponsor of the bill, was one of the five new judges added to the Supreme Court. It can be well understood how Lincoln's reference to *Judge* Douglas would carry with it an intonation of derision, indicating the method by which Douglas obtained the title.

One might anticipate that there would be many irregularities in legal procedure during the pioneer days in the West. It is not difficult to understand that the inconveniences associated with court attendance, due largely to slow and inadequate transportation facilities, would cause the lawyers and parties involved to agree on certain practices for the convenience of all concerned. Some of the innovations did not square with duly authorized legal routine.

Henry C. Whitney in his book on *Lincoln the Citizen* states that "Judge Davis often delegated his judicial function to others" and would request "Lincoln to hold an entire term; and frequently sit for short times." Lincoln was informed that such arrangements were not sanctioned by the

statutes, and he would only preside with the approval of all parties interested. Even at that, two cases Lincoln tried are said to have been reversed by the Supreme Court because of the irregular assignment.

Beveridge states that Lincoln once held court at Urbana for ten days but any support of this assumption seems to be lacking in the records. There is evidence that Lincoln did preside at a three-day session held in the Champaign Circuit Court Room at Urbana on April 22, 23 and 24, 1856, as revealed by the docket. Henry C. Whitney, who then lived at Urbana and traveled the circuit with Lincoln, is responsible for an interesting episode

PENDING ERECTION OF A NEW
COURTHOUSE FOR LOGAN COUNTY
TO REPLACE ONE DESTROYED BY
FIRE IN 1857. THE ORIGINAL
CHRISTIAN CHURCH BUILT ON
THIS SITE THAT YEAR WAS USED
AS BOTH CHURCH AND CIRCUIT
COURTROOM AND HERE ABRAHAM
LINCOLN PRACTISED LAW AND
BY COMMON CONSENT ACTED AS
TEMPORARY JUDGE AND THE
MATERIAL IN THE ORIGINAL
CHURCH WAS PRESERVED AND USED
IN THE PRESENT CHURCH IN 1904.

associated with the proceedings and it is supported with a document which Lincoln signs as "judge pro tem."

These three days at Urbana came on Thursday, Friday and Saturday at the close of the session. Local parties at Urbana were anxious to see the case *Chadden vs. Beasely* carried over to the next term of court and the local lawyers began to work on the Judge pro tem. They were successful in prolonging action until the close of the afternoon assembly on Saturday but Lincoln called for a candlelight session after supper when he wrote out and read to the members of the bar the following decision:

L. D. CHADDEN

vs.

J. D. BEASELY, ET AL.

CHAMPAIGN COUNTY COURT
April term, 1856
ASSUMPSIT

Ordered by the Court:

Plea in abatement, by B. Z. Green,
a defendant not served, filed Saturday

at eleven o'clock A.M. April 24th 1856, stricken from the files by order of court. Demurrer to declaration, if there ever was one, overruled. Defendants who are served now, at 8 o'clock P.M., of the last day of the term, ask to plead to the merits, which is denied by the court on the ground that the offer comes too late, and therefore, as by *nil dicet*, judgment is rendered for Plff. Clerk assess damages.

A. Lincoln, Judge pro tem.

The young lawyers who had pestered Lincoln, after hearing Lincoln's order asked him, "How can we get this up to the Supreme Court." Lincoln replied, "You have all been so smart about this case that you can find out for yourselves how to carry it up."

Possibly one of the earliest appearances of Abraham Lincoln as a Judge pro tem occurred in his home city, Springfield, on December 1, 1856. It would soon be noised about that Judge Lincoln was on the bench, and we can surmise that he drew an audience of considerable size. Twenty-two cases came before him but he was mostly occupied by entering decrees and orders.

A Logan County instance of Abraham Lincoln serving as a Judge pro tem occurred, according to tradition, during the September term in 1857, which began on September 21 and continued to October 2. While he was supposed to be in Chicago and Springfield most of this period there is a possibility he was in Logan County for two or three days. Dr. J. H. Beidler recalls, "The Logan County Court House had been destroyed by fire and court was held at that time in the Christian Church. As I entered the court room I discovered that Judge Davis was not occupying the bench but that another man and one I had never seen was dispensing justice. . . . I inquired who he was and was informed that he was Abe Lincoln of Springfield."

Possibly the only memorial ever dedicated to Abraham Lincoln as a Judge is a bronze tablet placed on the exterior wall of the Christian Church at Lincoln which occupies the site of the old church where the incident remembered by Mr. Beidler took place. A verbatim copy of the tablet appears in this bulletin.

"Abraham Lincoln & Lincoln, Illinois" to be Discussed by Panel on August 25

A highlight of the Lincoln Sesquicentennial Celebration will be the panel discussion on Heritage Day, August 25, at 7:00 p.m. at the Johnson Center for Performing Arts on the Lincoln College Campus. A lengthy article on this event appeared in our last issue of this newsletter. But, to summarize:

The topic is "Abraham Lincoln & Lincoln, Illinois," and the panel, to be moderated by **Ron Keller**, director of the Lincoln College Museum, will feature the following contributors:

- **Mark A. Plummer**, Professor of History Emeritus, Illinois State University and award-winning author of several books on Lincoln and Illinois history;
- **Wayne C. Temple**, chief deputy archivist at the Illinois State Archives, author of several books and numerous articles on Lincolniana and Illinois history, and former editor of the *Lincoln Herald*;
- **Paul J. Beaver**, Professor Emeritus, Lincoln College, author, co-producer of a documentary video about Lincoln in Logan County, and vice president of the Lincoln Sesquicentennial Committee; and
- **Paul E. Gleason**, assistant to the director of the Lincoln College Museum, history instructor at the college, and co-author of *Logan County: A Pictorial History*.

Free tickets may be obtained by contacting the **Abraham Lincoln Tourism Bureau** at 217-732-8687.

Continued from Page 1 - Lincoln Holds Gala Sesquicentennial

ground." According to accounts cited in Judge Lawrence B. Stringer's *History of Logan County, Illinois* (1911), that child was John Stevens, a local boy. However in 1991, Lincoln scholar and Logan County historian James T. Hickey said that his research indicated that "youngest American" might have been none other than Robert Lincoln. Proceeds from the sale of lots in the new town totaled \$6,000, a considerable sum in 1853.

Contracts drawn up by Abraham Lincoln for the sale of the town lots provided for the release of the purchasers in the event that the county seat was not established on the site within one year. In preparation for that occurrence, Robert Latham deeded the sites for the Logan County courthouse and jail. Indeed, in the next election, Lincoln, Illinois, was named the county seat.

Lincoln himself did not purchase a lot, but four years later, as payment on a \$400 note he had endorsed, he received a lot on the south side of the courthouse square. He owned it for the rest of his life. In 1874, his widow deeded it to their son, Robert Lincoln. Robert sold it to Captain David H. Harts, a member of the Lincoln College Board of Trustees.

Lincoln in Lincoln, Illinois

Abraham Lincoln knew the town of Lincoln intimately. His legal experience was gained in the courthouses of the old Eighth Circuit, which included Postville, Mt. Pulaski, and later, Lincoln. Deskins Tavern was his place of lodging when he stayed in the area. He sometimes played ball in Postville Park after court adjourned, and often threw the maul with John Allison, owner of Deskins Tavern.

→ Though never elected a judge, it was in Lincoln in 1857 that Abraham Lincoln filled this position *pro tem*, in the absence of and with the approval of Judge David Davis, and also with the approval of both parties in the case. He presided in the Christian church, as the Logan County courthouse had been destroyed by fire and was not yet rebuilt.

The following year, after leaving a train from Bloomington, he stepped into a tent near the Lincoln railroad depot to hear Senator Stephen A. Douglas, his opponent in the 1858 senatorial contest. Later in that campaign, Lincoln addressed a rally at the courthouse. Although Logan County went for Douglas in that election, it backed Abraham Lincoln for president in both the 1860 and 1864 elections.

The
Lincoln Newsletter
A PUBLICATION OF THE LINCOLN COLLEGE MUSEUM

300 Keokuk Street
Lincoln, Illinois 62656

FALL 2003

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